Civil Writ Petition No.1290/94
Mohari Devi & Others
Versus
Union of India and others

Date of Order ::: ***01/06***/2005

Hon'ble Mr. Justice Ajay Rastogi

Mr.Mukesh Agrawal for petitioner
Mr.Virendra Lodha for respondents.

Petitioner No.1 is widow of late Bhagwan Sahai and No.2 is her son. Both have filed joint petition seeking pensionary benefits due on account of death of her husband Bhagwan Sahai, who was working as Rakshak in Railway Protection Force.

Bhagwan Sahai was appointed in Railway Protection Force ("RPF") some where in 1965 and died on 01/02/79 while he was working as Rakshak in Office of Assistant Security commissioner, RPF, Western Railway, Ajmer. One departmental inquiry was initiated against him, in which he was removed from service by disciplinary authority but in appeal preferred by him, appellate authority vide order dt.24/11/78 (Ann.5) ordered to reinstate him in service, and further directed to proceed in the inquiry from the stage from where it had gone faulty. However, Bhagwan Sahai could not report for duty in compliance of order of appellate authority and unfortunately, he died on 01/02/79.

After death of Bhagwan Sahai, employee of Railway Protection Force, his widow & son made representations for grant of family pension and his

other retiral dues but respondents rejected their claim on the ground that since deceased employee failed to report back on duty even in view of appellate order dt.24/11/78(Ann.5), retiral benefits claimed for by them could not be extended and therefore, pensionary benefits were not released in favour of petitioners. Hence this petition.

Shri Mukesh Agrawal, Counsel for petitioners submitted that once order of removal from service in regular inquiry was set aside on appeal preferred by employee delinquent, vide order dt.24/11/78 by appellate authority, the employee ought to have been deemed to be in service pursuant to appellate order, which clearly stated that deceased employee has been taken back on duty – operative part of appellate order (Ann.5) reads as under –

> "The appeal of the Rakshak is, therefore, entertained and ***removal orders passed by the ASOR are quashed and he has been taken back on duty.*** A denovo proceedings would be held against the Rakshak from where the proceedings have gone faulty."

and according to him, their relationship of master & servant were restored and stood continued till last and after his death, no further inquiry could be was initiated and once the delinquent died while in service on 01/02/79, his legal heirs are entitled to pensionary benefits which accrued on his death on the basis of services rendered by him, including

family pension.

Respondents have filed reply to writ petition. Shri Virendra Lodha, Counsel for respondents submitted that since deceased employee failed to report on duty in compliance of appellate order dt.24/11/78 (Ann.5), order of his removal from service could not stand revoked and in such circumstances, his legal heirs are not entitled either for retiral benefits of deceased employee or for family pension etc. However, so far as amount dues towards provident fund are concerned, balance of Rs.293/- was transferred to his account.

Having considered rival contentions of parties and perused material on record, I find the fact which remains undisputed that order of penalty inflicted upon Bhagwan Sahai of removal from service was set aside vide appellate order dt.24/11/78 (Ann.5) (supra), whereby he was directed to be taken back on duty. Therefore, relationship of master & servant in case of present deceased employee was restored as a consequence of setting aside the order of his removal from service and thereby he remained an employee with no punishment in existence & operative on the day when he died on 01/02/79 while in service. In my opinion, merely because deceased Bhagwan Sahai failed to report on duty, order of penalty of removal from service could yet be operative especially by virtue of appellate order being in operation. In fact, order of removal passed by disciplinary authority had merged into the appellate order and thereby it in no manner could be

said to be effective after appellate order (Ann.5). As a result of setting aside the order of penalty pursuant to appellate order, the stigma stands washed away and he became employee of respondents RPF and legal heirs of the deceased employee became entitled for retiral benefits including family pension, to which they were otherwise entitled for.

R.80 of the RPF Rules, 1987, which provides for provident fund, gratuity, pension, medical facilities, passes etc., clearly postulates that where no specific provision has been made in these rules to that extent, Railway rules in the same manner as officer was holding the corresponding ranks or grades in the railways, are governed by the said Railway Rules. Similar is the provision in R.117 of RPF Rules, 1987, which provides as under :-

> "**117. Other conditions of service.** - In all other matters not prescribed in these rules, all members of the Force, irrespective of their ranks, shall be governed by the provisions contained in the extent, railway rules as applicable to railway servants of corresponding grades."

In this view of the matter, pensionary benefits so also family pension etc., as are admissible to servants under Railways Rules viz., Family Pension Scheme for Railway employees, 1964, are became applicable to employees of railway protection force. Under Family Pension Scheme for Railway Employees, 1964, "Family" includes "wife" in case of a male railway servant; minor sons &

unmarried minor daughters and they are members of Family, who are entitled for family pension, if Government servant dies after completion of one year of continuous service. Apart from it, applicability of family pension Rules, 1964 has not been disputed by respondents also.

As held supra, Bhagwan Sahai died while in service and by virtue of application of family pension scheme, legal heirs of Bhagwan Sahai deceased employee of RPF, became entitled for retiral benefits due to him for services which he rendered in railway protection force before his death, besides family pension.

Consequently, this writ petition is allowed. Respondents are directed to release retiral benefits of late Bhagwan Sahai for services rendered by him upto the date of his death, so also family pension to legal heirs of Bhagwan Sahai as admissible under Family Pension Scheme for Railway Employees, 1964. Arrears of amount payable as a consequence of aforesaid direction be computed and be paid alongwith interest thereon @9% p.a., within three months. No order as to costs.

(Ajay Rastogi), J.

K.Khatri/1290.